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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,833	04/13/2001	Ramaprakash H. Sathyanarayan	ORA010 US	4294

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EXAMINER

WOO, ISAAC M

ART UNIT	PAPER NUMBER
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2166

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,833

Applicant(s)

SATHYANARAYAN,
RAMAPRAKASH H.

Examiner

Isaac M. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-19,29-39,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) 5-10 and 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,11,19 29-39 and 43-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to Applicant's Amendments, filed on September 12, 2005 have been considered, but are deemed moot in view of new ground of rejections below.

2. Claims 29 and 44 are amended. Claims 1, 4, 11, 19, 29-39 and 43-44 are presented for examination for this office action.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 29-33 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106 (II) (A):

A. Identify and Understand Any Practical Application Asserted for the Invention

The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of

this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (*Brenner v. Manson*, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600,1603-06 (Fed. Cir. 1993)). Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful.

Apart from the utility requirement of 35 U.S.C. 101, usefulness under the patent eligibility standard requires significant functionality to be present to satisfy the useful result aspect of the practical application requirement. See *Arrhythmia*, 958 F.2d at 1057, 22 USPQ2d at 1036. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make the invention eligible for patenting. For example, a claim directed to a word processing file stored on a disk may satisfy the utility requirement of 35 U.S.C. 101 since the information stored may have some "real world" value. However, the mere fact that the claim may satisfy the utility requirement of 35 U.S.C. 101 does not mean that a useful result is achieved under the practical application requirement. The claimed invention as a whole must produce a "useful, concrete and tangible" result to have a practical application.

Regarding claim 29, "A apparatus copying items", includes *no physical structure of the machine in terms of its hardware or hardware and software combination*. Because the limitation of claim 29, "means for spawning" and "means for copying" are computer program software system that are not embedded any a computer-readable medium and

run by any a computer or machine. Therefore, the claims are not a statutory system and should be rejected under 35 U.S. C. § 101 as not being tangible.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "that" in line 6. Claim 43 recites "that" in line 6. Pronouns are not permitted, only what is being referred by "that" should be set forth in the claim. Thus, it is not clearly understood what is meant by "with a current process that performs said spawning". May be renders the claim indefinite by failing to point out hat is being performed. Applicants are advised to amend the claim so solve the 112 rejection set forth in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4, 11, 19, 29-39 and 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al (U.S. Patent No. 5,832,10, hereinafter, "Ito").

With respect to claim 1, Ito discloses, if an item is a directory (204, start directory synchronization, fig. 4, 2020, directory, fig. 20, col. 13, lines 10-17, col. 20, lines 14-29), spawning a new process (2070, subdirectory synchronization, fig. 20, col. 20, lines 21-30, if the item is directory, new subdirectory synchronization is performed recursively, (spawning new process)); and if the item is a file, copying the file (2040, fig. 20, col. 20, lines 42-54, col. 16, lines 18-34, col. 10, lines 4-21); wherein the new process if spawned executes simultaneously or contemporaneously with a current process performing the spawning (col. 16, lines 1-34, col. 13, lines 10-30), and the new process performs the act of spawning or copying with another item in the directory (fig. 20, 2020-2040, col. 20, lines 14-51); and wherein the current process repeats the act of spawning or copying with yet another item (fig. 20, 2020-2040, col. 20, lines 14-51).

With respect to claim 4, Ito discloses, comparing a current number of processes started for copying, with a limit, and waiting if the current number is greater than or equal to the limit, see (col. 9, lines 22-45, storage space is decided before backup).

With respect to claim 11, Ito discloses, transferring data from the file into a temporary buffer; locking the temporary buffer; and invoking a direct memory access (DMA) process for making a copy from the temporary buffer, see (col. 9, lines 22-45, col. 12, lines 46-65).

With respect to claim 19, Ito discloses, spawning is performed only if the directory is not a current directory and not a parent directory, see (fig. 20, 2020-2040, col. 20, lines 14-51).

With respect to claim 29, Ito discloses, spawning a process if an item to be copied is a directory (204, start directory synchronization, fig. 4, 2020, directory, fig. 20, col. 13, lines 10-17, col. 20, lines 14-29), and copying the item if the item is a file, see (fig. 20, 2020-2040, col. 20, lines 14-51); wherein each item is input to at least one of for spawning and for copying (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 30, Ito discloses, sending an email message if the means for copying encounters an error, see (col. 9, lines 22-45, col. 12, lines 46-65).

With respect to claim 31, Ito discloses, increasing a limit on a resource to maximum, see (col. 9, lines 22-45).

With respect to claim 32, Ito discloses, using memory buffer, direct memory access, see (col. 9, lines 22-45, col. 12, lines 46-65).

With respect to claim 33, Ito discloses, checking if the item is a link to itself, see (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 34, Ito discloses, process is started with an instruction to perform the method for each item in the directory, see (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 35, Ito discloses, process executes in parallel with any new process spawned by the repeating, see (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 36, Ito discloses, the number of processes created by spawning corresponds to the number of directories to be copied, see (fig. 20, 2020-2040, col. 20, lines 14-51).

With respect to claim 37, Ito discloses, the item is from a list of items to be copied, and another item and the yet another item are also from the list, see (fig. 20, 2020-2040, col. 20, lines 14-51, col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 38, Ito discloses, checking if the file is in a list of items to be excluded from copying, and performing the copying only if the file is not in the list, see (fig. 20, 2020-2040, col. 20, lines 14-51).

With respect to claim 39, Ito discloses, the file is copied to multiple destinations if specified by the user, see (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 43, Ito discloses, spawning a new process (2070, subdirectory synchronization, fig. 20, col. 20, lines 21-30, if the item is directory, new subdirectory synchronization is performed recursively, (spawning new process)), if the item is a directory, see (204, start directory synchronization, fig. 4, 2020, directory, fig. 20, col. 13, lines 10-17, col. 20, lines 14-29), and copying the item, if the item is a file, see (2040, fig. 20, col. 20, lines 42-54, col. 16, lines 18-34, col. 10, lines 4-21); wherein the new process if spawned executes simultaneously or contemporaneously with a current process that performs the spawning, see (col. 16, lines 1-34, col. 13, lines 10-30).

With respect to claim 44, Ito discloses, creating a new process (2070, subdirectory synchronization, fig. 20, col. 20, lines 21-30, if the item is directory, new subdirectory synchronization is performed recursively, (spawning new process)), if the item is a directory, see (204, start directory synchronization, fig. 4, 2020, directory, fig. 20, col. 13, lines 10-17, col. 20, lines 14-29); and copying the item, if the item is a file,

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see (2040, fig. 20, col. 20, lines 42-54, col. 16, lines 18-34, col. 10, lines 4-21), wherein at least one of the creating and the copying is performed for each item, see (2070, subdirectory synchronization, fig. 20, col. 20, lines 21-30, if the item is directory, new subdirectory synchronization is performed recursively, (spawning new process) and copying file, 2040, fig. 20, col. 20, lines 42-54, col. 16, lines 18-34, col. 10, lines 4-21).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac M. Woo whose telephone number is (571) 272-4043. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IMW
December 5, 2005


JEAN M. CORRIELLUS
PRIMARY EXAMINER